

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA,
WILEY W. MANUEL COURTHOUSE

PEOPLE OF THE STATE OF CALIFORNIA

NO. 578015B
3RD AMENDED
COMPLAINT

v.

RANDALL OSCAR ALSTON

PFN: BIZ694

CEN: 2319881

CALVESTER HOUSTON STEWART

PFN: BIE630

CEN: 2323490

ENDORSED
FILED
ALAMEDA COUNTY

MAY 02 2012

CLERK OF THE SUPERIOR COURT

Deputy

Defendant(s).

The Undersigned, being sworn says, on Information and belief, that RANDALL OSCAR ALSTON and CALVESTER HOUSTON STEWART did, in the County of Alameda, State of California, on or about March 29, 2012, commit a Felony, to wit: MURDER, a violation of section 187(a) of the PENAL CODE of California, in that said defendant(s) did unlawfully, and with malice aforethought, murder DEVIN LEE WHITMIRE, a human being.

"NOTICE: The above offense is a serious felony within the meaning of Penal Code section 1192.7(c) and a violent felony within the meaning of Penal Code section 667.5(c)."

"NOTICE: Conviction of this offense will require you to provide specimens and samples pursuant to Penal Code section 296. Willful refusal to provide the specimens and samples is a crime."

**SPEC ALLEG - NOTICE OF STATE PRISON ELIGIBILITY CLAUSE AS TO DEFENDANT
ALSTON**

It is further alleged that the above offense is a violent felony within the meaning of Penal Code section 667.5(c) and that pursuant to Penal Code section 1170(h)(3) an executed sentence for the offenses herein charged shall be served in the state prison.

ARMED WITH FIREARM CLAUSE AS TO DEFENDANT ALSTON

It is further alleged as against defendant RANDALL OSCAR ALSTON that in the commission and attempted commission of the above offense a principal in said offense was armed with a firearm, said arming not being an element of the above offense, within the meaning of Penal Code section 12022(a)(1)

**SPEC ALLEG - NOTICE OF STATE PRISON ELIGIBILITY CLAUSE AS TO DEFENDANT
STEWART**

It is further alleged that the above offense is a violent felony within the meaning of Penal Code section 667.5(c) and that pursuant to Penal Code section 1170(h)(3) an executed sentence for the offenses herein charged shall be served in the state prison.

**PERSONAL AND INTENTIONAL DISCHARGE OF A FIREARM, GBI CLAUSE AS TO
DEFENDANT STEWART**

It is further alleged as to the above count that said defendant CALVESTER HOUSTON STEWART personally and intentionally discharged a firearm, and caused great bodily injury and death to DEVIN LEE WHITMIRE within the meaning of Penal Code sections 12022.7(a) and 12022.53(d).

It is further alleged that defendant personally inflicted great bodily injury on another person within the meaning of Penal Code section 12022.7.

It is further alleged that said defendant personally and intentionally discharged a firearm within the meaning of Penal Code section 12022.53(c).

It is further alleged that said personally used a firearm within the meaning of Penal Code sections 12022.5(a) and 12022.53(b) and 12022.53(g).

SECOND COUNT

The Undersigned further deposes and says on Information and belief, that said CALVESTER HOUSTON STEWART did, in the County of Alameda, State of California, on or about April 13, 2012, commit a Felony, to wit: POSSESSION OF FIREARM BY A FELON - PRIOR(S), a violation of section 29800(a)(1) of the PENAL CODE of California, in that said defendant(s) did unlawfully own, purchase, receive, possess and have custody and control of a firearm, the said defendant(s) having theretofore been duly and legally convicted of a felony or felonies, to wit:

Case Number	Offense	Conviction Date	County	State
80-165517	12280(b)	2/16/2011	ALAMEDA	CA

FIRST PRIOR CONVICTION AS TO DEFENDANT STEWART

The undersigned further alleges that before the commission of the offense specified above, said defendant CALVESTER HOUSTON STEWART, on or about February 16, 2011, was convicted in the Superior Court of the State of California, in and for the County of ALAMEDA, of the crime of a Felony, to wit: POSSESSION OF AN ASSAULT WEAPON, a violation of section 12280(b) of the PENAL CODE of California, and received a sentence of probation therefor.

Pursuant to Penal Code Section 1054.5(b), the People are hereby informally requesting that defendant's counsel provide discovery to the People as required by Penal Code Section 1054.3.

Complainant therefore prays that a warrant issue and that said defendant(s) be dealt with according to law.

Subscribed and sworn to before me,
Wednesday, May 2, 2012

/s/ Berkeley PD-12-16723

KATHLEEN C. FAMULENER
Deputy District Attorney
State Bar #70791 dw
Alameda County, California